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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,988	04/17/2006	Marcello Memmolo	19725	8467
272 7590 08/05/2009 SCULLY, SCOTT, MURPHY & PRESSER, P.C. 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
SINGH, SUNIL K				
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
08/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,988

Applicant(s)

MEMMOLO ET AL.

Examiner

Sunil K. Singh

Art Unit

3732

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/21/2009 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-14 and 16-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification does not provide proper support for the limitations: a first radial groove for receiving a **securing element** and a free extension for coupling a **rotational tool**. These limitations were found as admitted prior art but were not directed to the present invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 13, 14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt et al. (US 2004/0096804) in view of Porter et al. (US 2004/0101808).

Vogt discloses a dental implant and (4A-4B) and a transfer part of a dental implant (3 in Figs. 3a-3c) that includes: a free extension (30) at one end of a transfer part that is capable of coupling a rotational tool and a first radial groove adjacent to the free extension that is capable of receiving a securing element (Figs. 3a-3c); a clamping portion (33); a second radial groove (331) that is capable to directly engage with the dental implant; a force transmission element (330) having an octagonal surface [0088]; and a clamp ring (332) in its non assemble state having a gap that is assembled in the radial groove (331) (Fig. 3b); an extension (30) having an outer polyhedral (Figs. 3a-3c) and a fixing portion (32) positioned between the extension (30) and the clamping portion (33) (Figs. 3a-3c). Vogt further discloses a combination of a transfer part (as previously described) and an inner ampule (Figs. 7a-8c) where the inner ample includes: a laterally open upper fixing portion (40) with indentions (42) that enlarges radially toward a large surface recess (43) (also shown in Fig. 8a); a lower fixation portion having a laterally

open indentation towards the recess and adapted to receive the implant (Fig 8c). Furthermore, Vogt discloses an ampule that includes: the indentation of the upper fixing portion (402) is trumpet like (Figs. 7a-7b) and the lower fixing portion is configured in the form of two support wings (Fig. 8c); the indentation is adapted to receive a fixing portion of the transfer part (Fig. 7e and 8c) and where lower fixing portion is adapted to receive an implant shoulder (Fig. 8c); and where the recess (61) is formed with rounded corners at its lower portion opposite to the indentation (Fig. 8c). However, Vogt fails to disclose a dental implant having an undercut dimensioned suitably for clampingly receiving a clamping ring; wherein the undercut corresponds the radial groove of the transfer part; and wherein the clamping portion connects to the dental implant via clamp ring.

Porter teaches a dental implant (10) that includes an undercut (110) dimensioned suitably for clampingly receiving a clamping ring (116) and wherein the clamping ring allows the clamping portion to connect to the dental implant (Fig. 6D); and wherein the undercut (110) corresponds to the radial groove (112) of the transfer part (64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vogt, to include an implant having an undercut dimensioned suitably for clampingly receiving a clamping ring, as taught by Porter, in order to provide an anti-rotational locking system where the implant is lockingly secured onto the transfer part of the apparatus.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt et al. (US 2004/0096804) in view of Porter et al. (US 2004/0101808) and further in view of Sutter et al. (US 5,078,605).

Vogt/Porter discloses the invention substantially as claimed except for a clamp ring being formed from polyether ether ketone (PEEK).

Sutter teaches a ring (31) that is inserted in a groove (25d) that is made of PEEK in order to provide a material non-toxic, biocompatible, and capable of being easily processed (Column 5, Lines 44-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vogt/Porter by forming a ring made of PEEK, as taught by Sutter, in order to provide a ring that is non-toxic and capable of easily being processed.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 05/21/2009 have been fully considered but they are not persuasive. In response to applicant's argument that Porter and Vogt is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, it is the same field of endeavor in that they are both connection means for connecting an object to an implant. Furthermore, they solve the same pertinent problem by providing a locking means that secures the implant to the object (i.e. transfer part).

Applicant further argues that it is improper to combine the two references is improper since one reference (Vogt) teaches the radial groove engaging the tool outside the implant and Porter teaches the undercut is formed within the implant. However, looking at Figure 5b of Vogt, the Examiner points out an undercut (301) formed within the dental implant. To modify Vogt to include a securing element such as a clamp ring on the radial groove (301) to securely connect the transfer part to the implant is taught by Porter (see rejection above). Thus, Vogt does indeed teach an undercut formed within the dental implant as shown in Figure 5b.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday (Increased Flex Schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

07/30/2009

/Sunil K Singh/
Examiner, Art Unit 3732

/Ralph A. Lewis/
Primary Examiner, Art Unit 3732